

(b)(6)



U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

**U.S. Citizenship
and Immigration
Services**

DATE: **JAN 29 2013**

OFFICE: NEBRASKA SERVICE CENTER

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center, denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) dismissed the petitioner's appeal from that decision. The petitioner then filed a motion to reopen the petition. The AAO granted the petitioner's motion and affirmed its prior decision. The AAO then dismissed a second motion to reopen. The matter is now before the AAO on a third motion to reopen. The AAO will dismiss the motion.

The petitioner seeks classification pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as a member of the professions holding an advanced degree. The petitioner seeks employment as an environmental scientist. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner qualifies for classification as a member of the professions holding an advanced degree, but that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States. The AAO has repeatedly affirmed the director's findings.

On motion, the petitioner submits a statement and a partial copy of a book he edited.

Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner. 8 C.F.R. § 103.5(a)(1)(i). A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

The AAO initially dismissed the petitioner's appeal on August 3, 2010. It granted the petitioner's first motion on January 10, 2012, and dismissed his second motion on September 11, 2012. The AAO dismissed the second motion for two reasons: (1) it was untimely, and (2) it did not meet the requirements of a motion to reopen. In its September 11, 2012 dismissal notice, the AAO stated:

The motion is untimely. The AAO issued its last decision on Tuesday, January 10, 2012. USCIS had to receive the petitioner's motion no later than Monday, February 13, 2012. *See* 8 C.F.R. § 103.8(b). The petitioner mailed his motion on Saturday, February 11, 2012, 32 days after the AAO issued the decision that the petitioner seeks to reopen. USCIS received the motion on Tuesday, February 14, 2012, 35 days after the AAO issued its decision. The filing date is the date of receipt, not the date of mailing. *See* 8 C.F.R. § 103.2(a)(7). Therefore, the petitioner did not timely file the motion.

The USCIS regulation at 8 C.F.R. § 103.5(a)(1)(i) states untimely filing may be excused in the discretion of USCIS where the petitioner demonstrates that the delay was reasonable and was beyond his control. The petitioner has not made such a demonstration here. The only exhibit submitted on motion is a copy of an electronic mail message dated January 20, 2012, which was in the petitioner's possession well

before the motion's filing deadline. The petitioner, on motion, does not acknowledge, much less explain, the delay in filing the motion. The petitioner did not meet the timely filing requirement and the regulation at 8 C.F.R. § 103.5(a)(4) requires the AAO to dismiss the motion.

In his latest motion, the petitioner states: "According to the *Decision Letter of the Administrative Appeals Office* (September 11, 2012), [the petitioner's] motion was filed 32 days after the AAO issued the decision and, as a result, it was filed within the allowable timetable." The AAO did not state that the petitioner filed the appeal on the 32nd day. Rather, the AAO stated that the petitioner mailed the motion on the 32nd day. The two statements are not equivalent. As the AAO already observed, the regulation at 8 C.F.R. § 103.2(a)(7) states: "The filing date is the date of receipt, not the date of mailing." The AAO did not receive the motion within 33 days, and therefore, by regulation, the motion was untimely. The petitioner's failure to regard the AAO's prior explanation is not grounds to reopen the proceeding. Therefore, the AAO will not disturb its prior finding that the petitioner's second motion was untimely.

The petitioner, on motion, disputes elements of the AAO's January 10, 2012 decision (affirming the dismissal of the appeal after the first motion). The petitioner must overcome the September 11, 2012 dismissal of the second motion before the AAO will revisit the merits of any earlier decision. As the AAO previously advised the petitioner, motions for the reopening of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered evidence. *INS v. Doherty*, 502 U.S. 314, 323 (1992)(citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. If the petitioner's second motion failed to overcome issues raised in response to the first motion, the filing of a third motion cannot remedy that failure. Each motion must address the most recent decision in the proceeding; a motion does not trigger *de novo* readjudication of earlier appeals, motions, or the underlying petition.

Unless USCIS directs otherwise, the filing of a motion to reopen or reconsider or of a subsequent application or petition does not stay the execution of any decision in a case or extend a previously set departure date. 8 C.F.R. § 103.5(a)(1)(iv). The petitioner cannot perpetuate the proceeding indefinitely simply by filing an unending series of motions.

In the September 11, 2012 decision, the AAO stated:

[T]he filing on its face does not meet the requirements of a motion to reopen. The petitioner does not state any new facts to be proved in the reopened proceeding, or support those new facts with affidavits or other documentary evidence. The petitioner simply repeats and expands upon prior assertions regarding his authorship of a book, his editorship of another, and his directorship of the Ecological Economics Innovations Center. The AAO discussed these matters in its prior notices, respectively dated August 3, 2010 and January 10, 2012. The petitioner's continued disagreement with the AAO is not grounds for reopening the proceeding.

The petitioner cannot overcome the above finding merely by, yet again, expressing disagreement with earlier AAO decisions.

When the AAO first dismissed the petitioner's appeal on August 3, 2010, the AAO acknowledged that, when the petitioner filed his petition, "he was in the process of editing a book on [REDACTED]" The AAO further stated: "The book, however, had yet to be published as of the date of filing and, as such, its ultimate influence in the field is unknown."

In the September 11, 2012 decision, the AAO acknowledged newly submitted evidence "indicating that the book may be published by August of that year." The AAO stated:

This evidence is not "new" in any relevant sense because it discusses a publishing project that the petitioner had already described in earlier filings. That the publishing process continues to move forward is not a "new" fact that justifies reopening a proceeding already decided three times before (once by the director and twice by the AAO).

The petitioner's latest motion includes a "sample of [the] recently published book." The petitioner does not explain why the submission of this material warrants reopening of the proceeding now. The AAO's previous findings, while publication was pending, continue to apply after publication.

The petitioner, in his third motion, has not overcome the first ground for dismissal (untimeliness), and has not even addressed the second ground for dismissal (failure to meet requirements of a motion). Therefore, the petitioner has not presented any basis for reopening. Furthermore, because the present motion was the petitioner's opportunity to overcome the AAO's September 11, 2012 decision, the petitioner cannot properly use any future motion to address aspects of that decision that he failed to address in this motion.

ORDER: The motion is dismissed.